EQUITY—EXECUTION SALE SET ASIDE BECAUSE SOLD EN MASSE.—An eighty acre tract of land was sold to the defendant at a sheriff's sale, to satisfy a judgment against one N. The plaintiff had previously bought the same land from N., after the judgment, but before the issuance of execution and sale of the land under it. He had no actual notice or knowledge of the execution or sale, or of the judgment itself, until long after the sheriff's deed was made. The life estate of N. in the land was worth $6,000, he had sold it to the plaintiff for $5,000, and it was sold at the sheriff's sale, *en masse,* for about $125. *Held,* the plaintiff was entitled to have the sheriff's deed cancelled, upon payment to the judgment creditor of the amount of the judgment against N. *Van Gundy* v. *Hill* (Ill. 1914), 104 N. E. 147.

It is well settled that the creditor may insist that his debt shall be paid; but when a needless sacrifice is made of the debtor's property, an unconscionable advantage is taken of the debtor, not warranted by law. *Smith* v. *Huntoon,* 134 Ill. 24, 24 N. E. 971. Many of the states have statutes which in effect provide that lands susceptible of sale under execution be sold in separate tracts or lots. For an example of such a statute see Hurd's (Ill.) Rev. St. 1899, c. 77, § 12. Where such statutes are in force the approved practice in the sale of divisible property is for the officer to offer each tract separately, and if no bidder can be secured, to add another tract thereto, and so on until a bidder is secured. *Henderson* v. *Harness,* 184 Ill. 520, 56 N. E. 786; *Weaver* v. *Guyer,* 59 Ind. 195. If the officer, in spite of the statute, sells property *en masse* which is capable of sale in separate parcels, such a sale is variously regarded in the several states. In some cases such a sale is held void. See *Forbes* v. *Hall,* 102 Ga. 47; 28 S. E. 915, 66 Am. St. Rep. 152; *Bardeus* v. *Huber,* 45 Ind. 235; *Brian* v. *Robinson,* 102 Tenn. 157, 52 S. W. 802. In others, a sale *en masse,* under execution, of separate tracts of land, is valid until set aside by some direct proceeding therefor. *Palmer* v. *Riddle,* 180 Ill. 461, 54 N. E. 227; *Rector* v. *Hartt,* 8 Mo. 448, 41 Am. Dec. 650. In still other cases it is held that such a sale is not invalid in the absence of proof that the property was sacrificed. *Glasscock* v. *Price,* 92 Tex. 271, 45 S. W. 415, 47 S. W. 965; *Hudepohl* v. *Liberty Hill Water & Mining Co.,* 94 Cal. 588, 28 Am. St. Rep. 149. The remedies of the owner in such a case would seem to be confined to setting the sale aside by motion, or by a proceeding in equity. *Boyd* v. *Ellis,* 11 Ia. 97; *White* v. *Watts,* 18 Ia. 74. A dictum in *Miller* v. *Baxter,* 108 Ga. 600, 34 S. E. 169, seems to indicate that the officer could be enjoined from selling more land than is necessary to satisfy the judgment. An injunction against the completion of a sheriff's sale under similar circumstances was denied, however, in *Holmes* v. *Steele,* 28 N. J. Eq. 173; *Ballance* v. *Loomiss,* 22 Ill. 82, and *White* v. *Crow,* 110 U. S. 183, 28 L. ed. 113.

EQUITY—STATUTE OF LIMITATIONS, WHERE JURISDICTION CONCURRENT.—Plaintiff alleged in his bill that in 1891 he had sold a tract of land to defendants for $5.00 an acre, and that the land conveyed exceeded the estimated quantity by some 159 acres. He is suing to recover $1,758, the

balance of the purchase money. *Held,* that he was barred by the statute of limitations. *Craig* v. *Gauley Coal Land Co.,* (W. Va. 1914), 80 S. E. 945.

Some states have statutes of limitations which apply to equitable as well as to legal causes of action. Under such statutes an equitable cause of action will be barred, unless expressly excepted: *Lile* v. *Kincaid,* 142 S. W. 434; *Wentworth* v. *Wentworth,* 75 N. H. 547, 78 Atl. 646. In the absence of these statutes there is no strict time which bars actions in equity; for relief may be granted even after the running of the statute, or an action may be barred in a shorter time. *Carlock* v. *Carlock,* 249 Ill. 330, 94 N. E. 507. The statute of limitations does not control suits in equity with the same strictness as it does actions at law: *Moneta* v. *Hoffman,* 249 Ill. 56, 94 N. E. 72. The cause of action in the principal case, if any existed, arose from the mutual mistake of the parties as to the quantity of land conveyed. For the correction of such a mistake, resort may be had to a court of law or a court of equity, as the injured party may elect. See cases cited in principal case. Equity therefore has concurrent jurisdiction. As a general rule where the jurisdiction of courts of equity and courts of law is concurrent, if a recovery at law is barred by delay, no recovery can be had in equity. *Tooker* v. *Nat'l Sug. Ref. Co.,* 80 N. J. Eq. 305; *Bowes* v. *Cannon,* 50 Colo. 262, 116 Pac. 336; *City of Centerville* v. *Turner County,* 126 N. W. 605. The statute will begin to run from the time the cause of action arises, unless the plaintiff, without fault or neglect on his part, is ignorant of the mistake. The bill in the principal case carries on its face an admission of knowledge sufficient to put the plaintiff on inquiry as to the quantity of land. The plaintiff, therefore, was not without fault, and the statutory period having run, and his legal action being barred, he is barred in equity also.

EXECUTION—WHAT CONSTITUTES A VALID LEVY.—Where a marshal attempting to make a levy on a stock of merchandise is prevented from entering the premises and his deputies who are admitted do no act beyond merely announcing the purpose of their entrance and the fact of their deputization, *held,* there was not a valid levy. *Hobbs* v. *Williams, et al.* (Mo. 1914), 162 S. W. 334.

The decision in the principal case reaffirms the common test of the validity of a levy, namely, the doing of some act by the officer, which but for the protection of the writ, would render him liable as a trespasser. *Douglas* v. *Orr,* 58 Mo. 573; *State ex rel. McPherson* v. *Beckner,* 132 Ind. 371, 31 N. E. 950, 32 Am. St. Rep. 257; *Battle Creek Valley Bank* v. *First Nat. Bank,* 62 Neb. 825, 88 N. W. 145, 56 L. R. A. 124; *Pitkin* v. *Burnham,* 62 Neb. 385, 87 N. W. 160, 55 L. R. A. 280, 89 Am. St. Rep. 763; *Hibbard* v. *Zenor,* 75 Ia. 471, 39 N. W. 714, 9 Am. St. Rep. 497. See *Green v. Burke,* 23 Wend. (N. Y.) 490; *Russell* v. *State* (Ga.), 79 S. E. 495; *Sanders* v. *Carter,* 124 Ga. 676, 52 S. E. 887. The nature of the act required, however, must necessarily depend largely upon the facts of each particular case, with special consideration of the persons against whose rights the levy is sought to be asserted and the nature of the property involved; and the exercise